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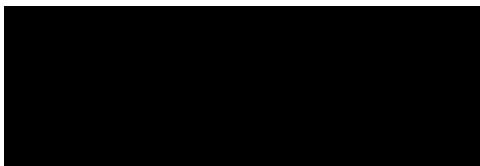
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U.S. Department of Homeland Security
20 Mass, Rm. A3042, 425 I Street, N.W.
Washington, DC 20536

**U.S. Citizenship
and Immigration
Services**



FILE:



Office: LOS ANGELES, CALIFORNIA

MAR 09 2004
Date:

IN RE:

Applicant:



APPLICATION:

Application for Waiver of Grounds of Inadmissibility under section 212(i) of the Immigration and Nationality Act, 8 U.S.C. § 1182(i).

ON BEHALF OF APPLICANT:

SELF-REPRESENTED

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

Handwritten signature of Robert P. Wiemann

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Interim District Director, Los Angeles, California and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The record reflects that the applicant is a native and citizen of Mexico. She was found to be inadmissible to the United States pursuant to section 212(a)(6)(C)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(6)(C)(i), for having sought to procure a nonimmigrant visa by knowingly and willfully misrepresenting a material fact on September 30, 1998. On September 6, 1999 she married a naturalized U.S. citizen and she is the beneficiary of an approved Petition for Alien Relative. The applicant seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i) in order to remain in the United States and reside with her U.S. citizen spouse.

The district director concluded that the applicant had failed to establish extreme hardship would be imposed on a qualifying relative. The application was denied accordingly. *See District Director's Decision* dated April 24, 2003.

Section 212(a)(6)(C) of the Act provides, in pertinent part, that:

- (i) Any alien who, by fraud or willfully misrepresenting a material fact, seeks to procure (or has sought to procure or has procured) a visa, other documentation, or admission into the United States or other benefit provided under this Act is inadmissible.

Section 212(i) of the Act provides that:

- (1) The Attorney General (now the Secretary of Homeland Security, [Secretary]) may, in the discretion of the Attorney General [Secretary], waive the application of clause (i) of subsection (a)(6)(C) in the case of an alien who is the spouse, son or daughter of a United States citizen or of an alien lawfully admitted for permanent residence, if it is established to the satisfaction of the Attorney General [Secretary] that the refusal of admission to the United States of such immigrant alien would result in extreme hardship to the citizen or lawfully resident spouse or parent of such an alien.

After reviewing the amendments to the Act regarding fraud and misrepresentation and after noting the increased impediments Congress has placed on such activities, including the narrowing of the parameters for eligibility, the re-inclusion of the perpetual bar, eliminating alien parents of U.S. citizens and resident aliens as applicants and eliminating children as a consideration in determining the presence of extreme hardship, it is concluded that Congress has placed a high priority on reducing and/or stopping fraud and misrepresentation related to immigration and other matters.

To recapitulate, the record clearly reflects that on September 30, 1998, the applicant knowingly and willfully misrepresented material facts by presenting fraudulent documents in order to procure a nonimmigrant visa. Specifically on her nonimmigrant visa application she stated that she was working as a supervisor and to support her claim she presented a fraudulent letter verifying her employment. When given the opportunity to retract her story she failed to do so. The applicant then entered the United States without inspection and on September 6, 1999 she married a U.S. citizen. On her application for adjustment of status Form I-485 the applicant failed to reveal that she had previously used a fraudulent document and misrepresented a material fact in order to procure a nonimmigrant visa.

Section 212(i) of the Act provides that a waiver of the bar to admission resulting from section 212(a)(6)(C) of the Act is dependent first upon a showing that the bar imposes an extreme hardship on a qualifying family member. Once extreme hardship is established, it is but one favorable factor to be considered in the determination of whether the Secretary should exercise discretion. *See Matter of Mendez*, 21 I&N Dec. 296 (BIA 1996).

In the present case, the applicant must demonstrate extreme hardship to her U.S. citizen spouse.

Matter of Cervantes-Gonzalez, 22 I&N Dec. 560 (BIA 1999) provides a list of factors the Board of Immigration Appeals (BIA) deemed relevant in determining whether an alien has established extreme hardship pursuant to section 212(i) of the Act. These factors include the presence of a lawful permanent resident or United States citizen spouse or parent in this country; the qualifying relative's family ties outside the United States; the conditions in the country or countries to which the qualifying relative would relocate and the extent of the qualifying relative's ties in such countries; the financial impact of departure from this country; and significant conditions of health, particularly when tied to an unavailability of suitable medical care in the country to which the qualifying relative would relocate.

On appeal, the applicant presented a brief, an affidavit from her spouse and a letter from a physician regarding her spouse's (Mr. [REDACTED]) medical condition. According to the letter from the physician Mr. [REDACTED] suffers from Apnea Sleep Disorder and he needs to be attached to an oxygen tank through the night. In addition the doctor stated that Mr. [REDACTED] underwent surgery for a herniated disc. In her affidavit the applicant states that her spouse is disabled due to his surgery for the herniated disc and that she needs to be with him in order to monitor his sleeping. In his affidavit Mr. [REDACTED] states that he needs his spouse in order to monitor the oxygen tank because it can easily come off during the night with body movement, or twitches. Mr. [REDACTED] states that due to his operation he experiences pain frequently and on occasions he becomes completely disabled. In addition Mr. [REDACTED] states that he would not be able to follow his wife to Mexico because all his medical supplies and machines he requires are in the United States and he may not be able to receive the medical support he needs. The letter from the doctor states that according to Mr. [REDACTED] and the applicant Mr. [REDACTED] will pull off the mask and the applicant will help him put it on again. Additionally the physician stated that Mr. [REDACTED] told him that he needs help from the applicant when he feels pain in the lumbar area. No documentary evidence was provided regarding the lumbar problem or to show that Mr. [REDACTED] is disabled, or if his medical condition, apnea sleep disorder, couldn't be treated and monitored in Mexico if he decides to relocate with the applicant. In addition, the medical documentation indicates that his apnea dates back to 1997, prior to his marriage to Mrs. [REDACTED]. It is assumed that he was able to take care of himself at that time without her assistance.

There are no laws that require Mr. [REDACTED] leave the United States and live abroad. In *Silverman v. Rogers*, 437 F. 2d 102 (1st Cir. 1970), the court stated that, "even assuming that the Federal Government had no right either to prevent a marriage or destroy it, we believe that here it has done nothing more than to say that the residence of one of the marriage partners may not be in the United States." The uprooting of family and separation from friends does not necessarily amount to extreme hardship but rather represent the type of inconvenience and hardship experienced by the families of most aliens being deported. *See Shooshtary v. INS*, 39 F. 3d 1049 (9th Cir. 1994).

The applicant and Mr. [REDACTED] in their affidavits state that their financial situation does not permit them to hire a nurse or any other individual to help with the care giving of Mr. [REDACTED] but provide no medical or financial evidence to support this statement.

The assertion of financial hardship to the applicant's spouse is contradicted by the fact that, pursuant to § 213A of the Act, 8 U.S.C. § 1183a, and the regulations at 8 C.F.R. § 213a, the person who files an application for an immigration visa or for adjustment of status on or after December 19, 1997 must execute a Form I-864 (Affidavit of Support) which is legally enforceable on behalf of a beneficiary (the applicant) who is an immediate relative or a family-sponsored immigrant when an applicant applies for an immigrant visa. The statute and the regulations do not provide for an alien beneficiary to execute an affidavit of support on behalf of a U.S. citizen or resident alien petitioner. Therefore, a claim that an alien beneficiary is needed for the purpose of supporting a citizen or resident alien petitioner can only be considered as a hardship in rare instances.

No evidence has been provided to substantiate that the applicant's financial contribution is critical to her husband's lifestyle or well-being.

U.S. court decisions have repeatedly held that the common results of deportation or exclusion are insufficient to prove extreme hardship. *See Hassan v. INS*, 927 F.2d 465 (9th Cir. 1991). For example, *Matter of Pilch*, 21 I&N Dec. 627 (BIA 1996), held that emotional hardship caused by severing family and community ties is a common result of deportation and does not constitute extreme hardship. In addition, *Perez v. INS*, 96 F.3d 390 (9th Cir. 1996), held that the common results of deportation are insufficient to prove extreme hardship and defined "extreme hardship" as hardship that was unusual or beyond that which would normally be expected upon deportation. *Hassan v. INS*, *supra*, held further that the uprooting of family and separation from friends does not necessarily amount to extreme hardship but rather represents the type of inconvenience and hardship experienced by the families of most aliens being deported. The U.S. Supreme Court additionally held in *INS v. Jong Ha Wang*, 450 U.S. 139 (1981), that the mere showing of economic detriment to qualifying family members is insufficient to warrant a finding of extreme hardship.

A review of the documentation in the record, when considered in its totality reflects that the applicant has failed to show that her U.S. citizen spouse would suffer extreme hardship if she was not allowed to remain in the United States. Having found the applicant statutorily ineligible for relief, no purpose would be served in discussing whether the applicant merits a waiver as a matter of discretion.

In proceedings for application for waiver of grounds of inadmissibility under section 212(i) of the Act, the burden of proving eligibility remains entirely with the applicant. Section 291 of the Act, 8 U.S.C. § 1361. Here, the applicant has not met that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.